

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of US LEC Corp. for)	
Declaratory Ruling Regarding)	CC Docket No. 01-92
LEC Access Charges for)	
CMRS Traffic)	
)	

**INITIAL COMMENTS OF
MINNESOTA INDEPENDENT COALITION**

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October 18, 2002

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SUMMARY

The Commission should grant the petition of US LEC Corp. Under the access charge regime, local exchange carriers provide interexchange carriers with access services so that interexchange carriers have the ability to originate and terminate long-distance traffic. Interexchange carriers receive payments from their customers for providing service and pay access to local exchange carriers pursuant to their tariffs for originating and terminating access services provided to interexchange carriers. The obligation to pay for access services provided by local exchange carrier is not changed by the fact that a CMRS provider's network is at the other end of the interexchange long distance call.

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The following Initial Comments are submitted by the Minnesota Independent Coalition (“MIC”). The members of the MIC are approximately 80 rural telephone companies¹ providing local exchange service in Minnesota. The MIC member companies participate in the National Exchange Carrier Association (NECA) Commission Tariff No. 5, which includes the terms and conditions for interstate access services.²

The MIC supports the Petition of US LEC Corp. and urges the Commission to uphold the right of incumbent local exchange carriers and competitive local exchange carriers (collectively referred to as “LECs”) to recover access charges from interexchange carriers (“IXCs”) that use LEC facilities for calls that originate from or terminate to the networks of commercial mobile radio service (“CMRS”) providers.

The Commission has observed that the access charge regime was designed to apply to the “situation in which three carriers, typically the originating LEC, the IXC, and the terminating

¹ 47 U.S.C. § 153(37).

² NECA Commission Tariff No. 5 is posted at www.neca.org/tariff5.htm.

LEC, collaborate to complete a long distance call.”³ The long distance customer pays long distance charges to the IXC, and the IXC must pay both the LEC originating the call and the LEC terminating the call for access service.⁴ The respective obligations of an originating or terminating LEC and the IXC should not change merely because the network at the other end of the long distance call is a CMRS network rather than a LEC network. While there are issues pending regarding the obligations of a IXC to pay access charges to CMRS providers under such circumstances,⁵ there is no indication that the respective obligations of the IXCs and the LECs are changed by the presence of a CMRS provider at the other end of the call.

The Telecommunications Act of 1996 provided that the reciprocal compensation provisions of 47 USC § 251(b)(5) did not change the access charge regime until “explicitly superceded by regulations prescribed by the Commission.”⁶

³ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, CC Docket Nos. 96-98 and 95-185, at ¶ 1034 (the “First Report and Order”).

⁴ *Id.*

⁵ An IXC’s liability for payment of access charges to a CMRS provider, when a long-distance interexchange call originates or terminates on the network of the CMRS provider, is currently being reviewed in *AT&T Corp. v. Commission*, et al (App. Ct. DC Case No. 02-1221, July 9, 2002). The Commission also stated in the preceding Declaratory Ruling (*In the Matter of Sprint PCS and AT&T Corp. for a Declaratory Ruling Regarding CMRS Access Charges*, WT Docket NO. 01-316, July 3, 2002), that it would consider any prospective changes to its rules governing interconnection between CMRS providers and IXCs in its pending proceeding, *Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 Commission Red 9610 (2001).

⁶ 47 USC § 251(g) provides:

On and after February 8, 1996, each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (***including receipt of compensation***) that apply to such carrier on the date immediately preceding February 8, 1996 under any court order, consent decree, or regulation, order or policy of the Commission, until such restrictions and obligations are ***explicitly superceded by regulations prescribed by the Commission*** after February 8,

While the Commission has implemented extensive revisions of interstate access charges, the Commission has not “explicitly superceded” the application of access charges to the originating and terminating access services provided by LECs to IXCs. To the contrary, the Commission has expressly stated that long distance traffic remains subject to the access charge regime.⁷

Further, the Commission has determined that there is no fundamental inconsistency between CMRS traffic and the application of the access charge regime. Rather, the Commission has determined that even CMRS providers must pay access charges under limited circumstances.⁸ There is no indication that IXCs should be allowed to avoid payment of access charges to LECs for access services provided in connection with long distance traffic that is connected to a CMRS network at the other end of the call. IXCs receive payment from their customers for long distance calling, and the IXCs are obligated to pay access charges for access services of LECs used to originate or terminate such calls.

1996. During the period beginning on February 8, 1996 and until such restrictions and obligations are so superceded, such restrictions and obligations shall be enforceable in the same manner as regulations of the Commission.

Emphasis added.

⁷ The First Report and Order ¶ 1034 reads in part:

[O]ur conclusion that long-distance traffic is not subject to the transport and termination provisions of section 251 does not in any way disrupt the ability of IXCs to terminate their interstate long-distance traffic on LEC networks. Pursuant to section 251(g), LECs must continue to offer tariffed interstate access services just as they did prior to enactment of the 1996 Act.”

⁸ The First Report and Order, ¶ 1043 reads in part:

Based on our authority under section 251(g) to preserve the current interstate access charge regime, we conclude that the new transport and termination rules should be applied to LECs and CMRS providers so that CMRS providers continue not to pay interstate access charges on traffic that currently is not subject to such charges, and are assessed such charges for traffic that is currently subject to interstate access charges.

It is imperative that LECs receive compensation for access services without delay and concerted stonewalling by IXCs. Many LECs are subject to the risks described in US LEC Corp.'s Petition. For that reason, the Commission should act expeditiously to affirm the right of LECs to payment of access charges from IXCs, regardless of whether a call originates or terminates on the network of a CMRS provider.

For the reasons set forth above, the Commission should affirm the right of LECs to payment of access charges from IXCs, regardless of whether a call originates or terminates on the network of a CMRS provide.

Dated: October 18, 2002.

Respectfully submitted,

MOSS & BARNETT
A Professional Association



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CERTIFICATE OF SERVICE

I, Kim R. Manney, do hereby certify that, on this 18th day of October, 2002, I have caused the foregoing "Initial Comments of Minnesota Independent Coalition" in CC Docket No. 01-92 to be filed electronically with the FCC by using its Electronic Comment Filing System, and copies of the Initial Comments were served by first-class U.S. mail, postage prepaid, on the following parties:

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/s/ Kim R. Manney

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